

1 hear the opposition, but maybe we could be
2 more specific about that.

3 JUDGE SIPPEL: Well, there is
4 opposition to what I was saying. It seemed to
5 me, I thought your case, in common parlance,
6 was sort of clean and could go up first, go up
7 in the first group.

8 MS. WALLMAN: That's what I
9 advocate to you, Your Honor.

10 JUDGE SIPPEL: I understand.

11 MS. WALLMAN: And if it is
12 helpful to you in responding to the urgency
13 that the Commission has expressed, I
14 discussed with counsel for defendants
15 yesterday that Wealth TV believes that we
16 could even go a few days faster than the
17 schedule to which I expressed no objection.

18 JUDGE SIPPEL: Did either of you
19 reserve that? You didn't serve that. This
20 might be something that you are just going to
21 have to discuss outside the courtroom. I want
22 to give you dates.

1 MS. WALLMAN: Your Honor, for
2 Comcast, since we have all three cases, it
3 would be helpful for us to have dates. And we
4 don't take a position on which case goes
5 first. We have sort of assumed based on the
6 hearing designation order, and the order in
7 which the complaints were filed, that that
8 order would be followed.

9 But we are prepared to go forward
10 with the Wealth schedule that we filed
11 yesterday where there was agreement with the
12 parties. The MASN schedule starts a little
13 later where there was agreement with the
14 parties. And there hasn't been agreement with
15 the NFL. But we are - we don't have strong
16 feelings which case goes first.

17 MR. SOLOMON: Your Honor, could I
18 offer a specific proposal that might help
19 break the logjam? I know that we prepared for
20 a hearing date that begins in May - excuse me,
21 that begins in March. And we are sort of the
22 outlier here, in a sense.

1 One possibility would be to have
2 the NFL Network MASN case begin on April 14th,
3 which is the week before the agreed date for
4 the Wealth TV cases, and a couple of weeks
5 before the apparently agreed date for the MASN
6 case. That would - and I think if that date
7 were established, we could work backwards with
8 our colleagues from Comcast and agree on
9 intermediate dates.

10 But if that date were to work that
11 would allow the agreements that have been
12 reached with regard to both the MASN case and
13 the Wealth TV cases, the agreed dates to go in
14 place, it would satisfy our interest in going
15 forward expeditiously in going first, and it
16 would create sort of a logical sequence for
17 Your Honor in terms of resolving the disputes.

18 JUDGE SIPPEL: Well, let me hear
19 from MASN counsel. What's your thought on
20 this?

21 MR. FREDERICK: Your Honor, David
22 Frederick for MASN. Our scheduling concern

1 really deals with a matter that is pending in
2 the Supreme Court which I have for another
3 client, in which the Supreme Court has not set
4 the argument date in a case that I am likely
5 to be arguing for South Carolina against North
6 Carolina in a boundary dispute case. And the
7 court's calendar sets arguments the weeks of
8 April the 21st and the following week. And we
9 don't have a date yet for that argument.

10 And so we agreed with Comcast to
11 have a scheduled hearing that would start the
12 following week, simply because we don't know
13 when I am going to be tied up arguing for
14 South Carolina against North Carolina. If we
15 get that date and there is further clarity we
16 would be happy to move as quickly as possible
17 consistent with those dates. The Supreme
18 Court just hasn't issued its arguing calendar
19 yet.

20 JUDGE SIPPEL: I can't help you
21 there.

22 MR. COHEN: Your Honor, would it

1 be possible for us to take a two-minute break
2 and speak to Comcast counsel to discuss Mr.
3 Levy's proposal? Because it obviously - it's
4 Comcast that has all three cases. But I think
5 for the MASN defendants, we are prepared to go
6 forward on the date that we talked about,
7 defending Wealth defendants on the dates that
8 we talked about. And if MASN wants it to
9 start after that because of Mr. Frederick's
10 schedule, as long as we have our time. But I
11 think we would like to discuss with Comcast
12 for a minute whether that kind of a proposal
13 makes sense. I don't know whether the April
14 14th meets their needs or not.

15 JUDGE SIPPEL: Well, I don't mind
16 doing that. But maybe we could hear Comcast's
17 counsel right now in a general way. Do you
18 think you'd want to work something out with
19 them on that basis?

20 MR. TOSCANO: I think we would be
21 able to work something out on that basis. I
22 mean as you know, we proposed April 21st. I

1 don't want to get into a dispute over one
2 week. We've got a lot to do before the
3 hearing, but I think we could work that out.

4 JUDGE SIPPEL: All right. Well,
5 maybe this is just premature. I'm satisfied
6 with the dates. I mean generically I'm
7 satisfied with the dates, certainly.

8 MR. MILLS: One other
9 possibility, just move everything back a week,
10 and let the NFL case start on the 21st, the
11 Wealth TV case could start the following
12 weeks, and the MASN cases start -

13 JUDGE SIPPEL: What's the purpose
14 of that?

15 MR. MILLS: Well, because Comcast
16 has three cases to get ready, and they have
17 originally proposed April 21st, and it's being
18 moved up a week. So if there is any concern
19 at all about that, it could be addressed that
20 way.

21 MS. WALLMAN: Your Honor, I have
22 four cases to prepare, and I'd be prepared to

1 go as early as April 7th.

2 MR. SCHONMAN: Your Honor?

3 JUDGE SIPPEL: Yes, hold on just
4 a second. Yes, sir?

5 MR. SCHONMAN: Would it help to
6 inquire of the parties how long they think
7 their respective cases may last so that we can
8 juggle and shoehorn cases in a logical manner?

9 JUDGE SIPPEL: Well, it really
10 isn't going to make any - somebody is going to
11 have to go first, no matter how much - who is
12 going to estimate what time. If we are
13 talking about - there was a logical break, I
14 thought it was essentially there'd be a couple
15 of cases that maybe could be done essentially
16 just off the economists without going into
17 more - but anyway I don't think I'm ready to
18 go there yet.

19 Does anybody have any thoughts on
20 it? I mean it's a good point. Does anybody
21 have any thoughts?

22 Yes, sir?

1 MR. HARDING: Have you considered
2 alternate weeks in all cases proceeding
3 simultaneously, or do you want to finish one
4 case before you start the next one?

5 JUDGE SIPPEL: Well, it's kind of
6 like putting your trousers. I'd rather do one
7 leg before the other.

8 MR. HARDING: That would be my
9 druthers certainly.

10 JUDGE SIPPEL: The reason I'm
11 saying it in kind of a vague way, you do have
12 these - you have about four cases in tandem,
13 and I haven't quite been able to get that
14 through my mind, but the concept is fine. And
15 maybe if we are doing cases in tandem, it'd be
16 more of a flow to it. But preferably, what I
17 would like to do, I don't care whether it's
18 MASN or NFL first, I'd like to do one of them
19 first and one of them second. And it would be
20 basically a week between. There'd be a week
21 for NFL and a week for MASN.

22 MR. BLAKE: Your Honor, the logic

1 of what Mr. Levy has proposed is that you have
2 two sets of agreed upon dates, and what we are
3 trying to do is build off of that and say that
4 we hope that we could have our case without
5 delaying those other cases be inserted in
6 front of that by a week or two. That is the
7 thrust of the proposal.

8 JUDGE SIPPEL: Let me see if I
9 understand that. We do have various dates.
10 But you are going to have two sets of dates,
11 is that what you are saying?

12 MR. BLAKE: You would accept a
13 date for the MASN case, you'd accept a date
14 for the Wealth TV cases, and the NFL date
15 would come before. And that would not delay -
16 that would not delay the other cases.

17 JUDGE SIPPEL: I see.

18 MR. COHEN: Your Honor, this is
19 Jay Cohen again for Time-Warner.

20 JUDGE SIPPEL: Yes, sir, Mr.
21 Cohen?

22 MR. COHEN: I think I hear an

1 agreement in the works. I mean I hear the NFL
2 and Comcast say they will begin on the 14th,
3 that Wealth defendants are prepared to begin
4 on the 21st. I don't know at the moment
5 whether Mr. Frederick can begin on May 5th or
6 a couple of days later, depending on the
7 length of the trial. But as early as May 5th.
8 And I think we've just worked out the dates.
9 Your Honor, we would quit while we're ahead.

10 MR. FREDERICK: Your Honor, we
11 would propose that you establish some time
12 limits for each party's presentation. We've
13 gone through this drill with Time-Warner
14 cable. We did booth liability and remedy in
15 two days in arbitration last May. We had
16 written prepared declarations. We had cross-
17 examination. We had the arbitrator engaged in
18 arbitration. We had 25 witnesses, and we got
19 the entire thing done in two days with an
20 arbitrator's decision three weeks after that,
21 that was a fully formed reasoned written
22 decision.

1 If you impose time limits on the
2 parties that will force us to become more
3 efficient and we can have the NFL go first, we
4 can proceed along. It's having an open-ended
5 trial process that creates scheduling
6 difficulties for everybody, and it's not
7 necessary given what the nature of the issues
8 is.

9 JUDGE SIPPEL: All right. Well,
10 I'm interested in what you're saying.

11 MR. SOLOMON: Your Honor, we have
12 some concerns with that. We certainly agree
13 with expedition, and setting target dates to
14 try to move things quickly. But I think both
15 Judge Steinberg and you made the point that
16 you didn't want to artificially restrict the
17 course of the proceeding in order that the
18 parties had their due process rights to
19 appropriately do cross-examination and other
20 steps in the trial.

21 The Commission has now essentially
22 affirmed both your and Judge Steinberg's order

1 saying that expedition is very important, but
2 it needs to be tempered by due process.

3 So it seems to me that it's
4 appropriate to go forward the way that you had
5 previously considered it, which is, we are all
6 going to try to move in an expedited fashion,
7 but without initial, artificial constraints.

8 MR. FREDERICK: Your Honor,
9 Comcast will be hard pressed to come up with
10 a single case that says due process requires
11 that you allow an open ended trial. No such
12 case exists like that. You can impose a time
13 limit. If you want to have limited cross
14 examination, that can be something that you
15 impose on the parties. There is no
16 constitutional provision here.

17 Comcast talks about due process a
18 lot. They don't have a single case citation
19 to support that view.

20 MS. WALLMAN: Your Honor, because
21 of the open ended view that some of the
22 defendants have taken with respect to due

1 process, this is exactly what makes it
2 unsatisfactory for Wealth TV to go second. I
3 am very concerned that if it's open ended, and
4 the proceeding starts with NFL, that it will
5 be extending into additional weeks. The Court
6 may find that it can't move promptly to an
7 April 21st hearing date. And as much as I'd
8 hate to be in contest with other complainants,
9 the Wealth TV cases deserve to go first.
10 We've been waiting the longest. We have been
11 fighting this since December of 2007 beginning
12 with Time-Warner. And we are the ones that
13 are least equipped in this courtroom to
14 sustain additional delays in the process.

15 MR. LEVY: Your Honor, I don't
16 think that the discussion is about due process
17 and how the cross examination is going to go
18 really is relevant to setting the dates. If
19 we had to, the NFL case could be done in a
20 week. That could be set at April 14th as
21 they suggested. Wealth TV cases could start
22 on April 21st. And it shouldn't make any

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1 difference to Wealth TV if they were not
2 objecting to the schedule that started on the
3 21st. The fact that something happens before
4 that is pretty much irrelevant to that. And
5 then if the MASN folks want a specific date,
6 they can have a specific date. Make it May
7 5th or May 6th or whatever it was they
8 proposed. That give two weeks for the Wealth
9 cases, and anything can happen in a trial.
10 But there is no reason to debate now whether
11 it's going to be done in that two week period.

12 MS. WALLMAN: With great respect
13 I think there is a very sound reason to
14 decide, to discuss what's going to happen
15 because it implies a delay that was not
16 contemplated when I acknowledged that the
17 schedule that was presented by defendants was
18 reasonable. So the objection is relevant, and
19 the concern is that it's very large for a
20 small company that has been waiting for over
21 a year just to have a hearing.

22 MR. LEVY: Your Honor, it is hard

1 for me to imagine even if our evidence were
2 presented orally as opposed to by written
3 testimony, and we've suggested a process of
4 written direct testimony for both sides. But
5 even if our evidence were presented orally, it
6 is hard for me to imagine that an affirmative
7 case would take longer than a day.

8 Now I can't speak for how long
9 Comcast would take to cross-examine our
10 witnesses, and I don't know what they have to
11 respond. But we view the issues here as very
12 straightforward and relatively limited. And
13 I don't see any reason why if we start on the
14 14th which I believe is a Tuesday that we
15 couldn't finish by the end of the week, and
16 probably a day or two before.

17 JUDGE SIPPEL: Well, if you can
18 come in on the 13th, it's not a holiday.

19 MR. LEVY: No, I only mentioned
20 the 14th because I had an understanding from a
21 prior hearing that you like to reserve your
22 Mondays.

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1 JUDGE SIPPEL: Well, it's not my
2 Mondays. Usually it's for people flying in
3 from out of town. I mean it's more to
4 accommodate witnesses.

5 MR. LEVY: I have no objection to
6 starting on the 13th.

7 JUDGE SIPPEL: Well my point is,
8 if it's only going to take you one day, it
9 might take you two, but if you are really
10 confident that can be done, because that's
11 putting your case on, is that right?

12 MR. LEVY: Yes, sir.

13 JUDGE SIPPEL: All right, then
14 Comcast has to put their case on. Then you
15 are going to have to really twist my arm to
16 get any rebuttal.

17 MR. LEVY: You have made that
18 clear before, Your Honor.

19 JUDGE SIPPEL: Okay, all right.

20 You are going to have experts.

21 I've read your -

22 MR. LEVY: I anticipate we are

1 going to have one expert, and we'll have one,
2 two, maybe three fact witnesses. But again I
3 think the affirmative case could be presented
4 in about a day, maybe a day and a half.

5 JUDGE SIPPEL: Well, did you have
6 cross-examination at the - before the
7 arbitrator? Was there much cross-examination
8 before the arbitrator?

9 MR. FREDERICK: This is David
10 Frederick for MASN. NFL didn't, to my
11 knowledge, have an arbitration of a carriage
12 complaint. What MASN did, and the arbitrator
13 himself participated. He limited the cross-
14 examination; he had a time limit. Then he
15 cross examined each witness for both sides,
16 then he invited counsel to cross-examine the
17 witnesses.

18 JUDGE SIPPEL: Did he have expert
19 testimony too?

20 MR. FREDERICK: Yes, multiple
21 experts.

22 MR. COHEN: Your Honor, that's

1 not what the rules of this proceeding
2 contemplate having, when the other party that
3 participated, and the fact that we agreed to
4 give up certain rights in MASN doesn't mean
5 that we are going to do it here. We are not
6 going to do it here.

7 Having said that, I think if you
8 tell the Wealth parties, after all we are four
9 cases that we are talking about shoe-horning
10 into this, not one case; we have four cases.
11 We do not completely overlap with respect to
12 our proof, the negotiations between Wealth TV
13 and each of the defendants is separate, and it
14 differs. And there are a lot of factual
15 disputes with respect to those negotiations.

16 I think if Your Honor says that
17 MASN needs to start on May 5, and we know we
18 have two whole weeks for the trial, we will do
19 our best to finish it, and if we run over by
20 a day or two, which I'm not saying we will, I
21 don't think that the future of Major League
22 baseball will turn on that, if MASN starts on

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1 May 7th instead of May 5th.

2 So if that is the schedule, and if
3 the NFL is going to commit to finishing the
4 week of the 13th, we will start on the 21st and
5 do our level best to finish before May 5th.

6 JUDGE SIPPEL: All right, so the
7 NFL would go first, and now again this is a
8 hypothetical schedule I am trying to get
9 mentally clear. On April 14th the NFL would
10 start.

11 MR. FREDERICK: It could be the
12 13th.

13 JUDGE SIPPEL: Well, the 13th.

14 MR. TOSCANO: Your Honor, we would
15 object to the 13th. And we object to this
16 creeping forward. We said that a week would
17 be tough, but we could possibly work it out,
18 and now up to 13th.

19 Mr. Levy said they could do their
20 case in a day; now it's a day and a half.

21 The difficulty with all of this is
22 that there hasn't been discovery yet, and we

1 are trying to now set constraints on a trial
2 where we haven't even had discovery. And we
3 cannot commit to a time limits for trials.

4 JUDGE SIPPEL: I can understand
5 everything you are telling me, but this effort
6 has to start somewhere, and we need to bring
7 some certainty into this process. But I
8 understand, these days may not stick if
9 discovery gets to be too messy, but I don't
10 believe that's going to happen. I just don't
11 believe that's going to happen.

12 MR. MILLS: I have a question.
13 It seems that for each of these schedules the
14 Monday before the hearing starts is a
15 documented mission session starting at 10:00.
16 So the Mondays it seems is a way to get all
17 the evidence authenticated, so that shortens
18 up the rest of the week. I'm just pointing
19 that out. Otherwise you are going to starting
20 the documents sessions previous Friday.

21 JUDGE SIPPEL: That's an
22 excellent point. I was thinking of having a

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1 document. That would be for all the cases.
2 But I don't know if that makes any sense.

3 MR. MILLS: That's why they all
4 started on Tuesday, I think, to give the
5 witnesses to come in on Monday, get the
6 documents in on Monday, and the hearing starts
7 on Tuesday.

8 JUDGE SIPPEL: Right. Thank you
9 for bringing that fact to my attention.

10 At any rate we've got to dates to
11 work with now, the working dates. We've got
12 April 14th, the NFL case would start. Now
13 April 21st, that'd be the Wealth TV cases, is
14 that right?

15 MR. COHEN: Yes.

16 JUDGE SIPPEL: And then the May
17 5th would be the MASN case. And that that
18 takes care of the Supreme Court, hopefully.
19 I've got the bureau, the Supreme Court, I
20 can't accommodate everybody.

21 (Laughter.)

22 Now I still haven't - I'm trying

1 to - I'm taking your wishes seriously at the
2 moment. I'm not trying to just brush that
3 off. But how is it that - are you
4 representing the four Wealth TV cases?

5 MS. WALLMAN: Yes.

6 JUDGE SIPPEL: You're their lead
7 counsel on all of them?

8 MS. WALLMAN: Yes.

9 JUDGE SIPPEL: And what is the
10 reason that you can't put this off until the
11 21st, or that you feel that it is causing you
12 a problem of some sort?

13 MS. WALLMAN: There are a couple
14 of reasons.

15 Number one, I have expressed that
16 I didn't think that the proposed schedule was
17 unreasonable, but I also reserved the option
18 to discuss with Your Honor the fact that I
19 think everything that is agreed to could be
20 done a few days earlier, perhaps as much as a
21 week earlier. I discussed this with counsel.
22 They were unable at least as of yesterday to

1 say that they could do everything a week
2 earlier.

3 I think it can be done a week
4 earlier. I'm also concerned that despite what
5 we all say sitting here today, a case that
6 starts on April 14th may not end in time for
7 something to really start on April 21st, in
8 which case the delay and the expense attendant
9 with the delay, the stalemate effect that the
10 pendency of these cases have had on my
11 client's business, enough is enough.

12 It may seem that the difference
13 between one week and the next is marginal, but
14 it's cumulative, and it's been going on for a
15 very long time.

16 JUDGE SIPPEL: Well, I know.

17 MR. COHEN: Your Honor, for the
18 Wealth defendants.

19 JUDGE SIPPEL: Yes, sir.

20 MR. COHEN: I mean first of all
21 we have to stop talking about businesses
22 turning on a week. A week in the life of

1 these cable networks is not going to make a
2 difference.

3 And second with all due respect to
4 Ms. Wallman, had we not gone through this
5 little detour over the past couple of months
6 of her making, and making a motion to Media
7 Bureau, we'd have been in trial on March 17th,
8 we would have largely finished our discovery.

9 So we have to assign blame where
10 blame lies. I mean they caused a lot of this
11 delay. A week doesn't make a difference. We
12 have a lot of people in the room. We've
13 agreed upon a schedule. We should set it and
14 move on. We have a lot of work to do. This
15 is not going to be an easy schedule for at
16 least the Wealth defendants to meet, but we
17 are prepared to roll up our sleeves and start
18 right away.

19 MR. FREDERICK: Just so the
20 record is clear, and with all due respect to
21 Your Honor, if the cable companies had not
22 fought the time limits, we would have had a

1 decision by the Media Bureau on February 13th
2 for Wealth and February 20th for MASN.

3 So if we are going to be assigning
4 blame, we ought to be fair in how we accord
5 it.

6 MS. WALLMAN: And had they not
7 objected to the 60-day limit, we would have
8 had decisions in December. So I don't feel
9 that I need to defend decisions of the
10 Commission. But I present again to Your Honor
11 my plea that this has been going on for a very
12 long time. I have not argued that the
13 business turns on one week, but I am
14 suggesting that the business does have some
15 correlation in performance to the delay over
16 a year in the Commission's according the
17 opportunity for a hearing.

18 MR. TOSCANO: And Your Honor, if
19 it's important for Wealth to go first, we can
20 move the NFL back. As we have proposed, April
21 21st, will be the appropriate time to get what
22 we need done. And there is a lot of discovery